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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/002,669

10/31/2001

Jerome T. Hartlaub

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MEDTRONIC, INC.
710 MEDTRONIC PARK
MINNEAPOLIS, MN 55432-9924

EXAMINER

NAJARIAN, LENA

ART UNIT

PAPER NUMBER

3626

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/25/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/002,669	HARTLAUB, JEROME T.	
	Examiner	Art Unit	
	Lena Najarian	3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20061103</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Notice to Applicant

1. This communication is in response to the amendment filed 11/3/06. Claims 12, 14, 19, 21, 24, and 25 have been amended. Claims 12-26 remain pending.

Drawings

2. Some of the objections to the drawings are hereby withdrawn due to the amendment filed 11/3/06. However, the objections below remain from the previous Office Action.
3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: item 40 (Fig. 4). Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.
4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the

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description: item 820 (p. 15, para. [50], line 11). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

5. The objection to the abstract is hereby withdrawn due to the amendment filed 11/3/06.

Claim Rejections - 35 USC § 112

6. The rejection of claims 19-20 and 25-26 under 35 U.S.C. 112 is hereby withdrawn due to the amendment filed 11/3/06.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 12-15 and 17-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lebel et al. (US 2002/0016568 A1) in view of Garcia (6,088,429). (A) Claim 12 has been amended to now recite "wherein the drug scheduling module receives data about the implantable drug delivery device, wherein the data is selected from the group consisting of drug usage information, pump manufacturer requirements, and drug management data." As per these features, the Examiner respectfully submits that Lebel teaches wherein the drug scheduling module receives data about the implantable drug delivery device, wherein the data is drug usage information (para. 179 and para. 180 of Lebel).

Insofar as the claim recites "selected from the group consisting of," it is immaterial whether or not the other elements are also disclosed.

The remainder of claim 12 is rejected for the same reasons given in the previous Office Action, and incorporated herein.

(B) Claims 13, 15, 17, 18, 20, 22, 23, and 26 have not been amended and are rejected for the same reasons given in the previous Office Action, and incorporated herein.

(C) Referring to claim 14, Lebel discloses the drug scheduling module further receives drug management instructions (para. 320 of Lebel).

(D) The amendments to claims 19 and 25 were apparently made to overcome 112 issues set forth in the prior Office Action. However, these changes do not affect the scope and breadth of the claims as originally presented and/or in the manner in which the claims were interpreted by the Examiner when applying prior art within the previous

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Office Action. As such, these claims are rejected under the same rationale given in the prior Office Action, and incorporated herein.

(E) Claim 21 has been amended to now recite "wherein the scheduling module is adapted to contact via the telemetry module at least one entity for the scheduling activity, the at least one entity being selected from the group consisting of a pharmacy, a caregiver, a physician, and a hospital." As per these features, the Examiner respectfully submits that Lebel discloses that the module is adapted to contact via the telemetry module a physician for the scheduling activity (para. 132 and para. 134 of Lebel).

Insofar as the claim recites "selected from the group consisting of," it is immaterial whether or not the other elements are also disclosed.

The remainder of claim 21 is rejected for the same reasons given in the previous Office Action, and incorporated herein.

(F) Referring to claim 24, Lebel discloses contacting the patient via the telemetry module (para. 134 and Fig. 3 of Lebel).

Lebel does not disclose wherein the scheduling module contacts the patient for the scheduling activity.

Garcia discloses wherein the scheduling module contacts the patient for the scheduling activity (col. 6, lines 17-28 of Garcia).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned feature of Garcia within Lebel. The

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motivation for doing so would have been to provide an easier and higher accuracy system for refilling drugs (col. 6, lines 58–65 of Garcia).

9. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lebel et al. (US 2002/0016568 A1) in view of Garcia (6,088,429), and further in view of Akers et al. (6,112,182).

(A) Claim 16 has not been amended and is rejected for the same reasons given in the previous Office Action, and incorporated herein.

Response to Arguments

10. Applicant's arguments filed 11/3/06 have been fully considered but they are not persuasive. Applicant's arguments have been addressed in the rejection of claims 12 and 21 above.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lena Najarian whose telephone number is 571-272-7072. The examiner can normally be reached on Monday - Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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1-11-07


**C. LUKE GILLIGAN
PRIMARY EXAMINER
TECHNOLOGY CENTER 3600**